

Maximilian Steinbeis , Carla Dietmair Sa 11 Nov 2017

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Dear Friends of Verfassungsblog,

If you're not right-wing, you're left-wing. If you're not white, you're black. If you're not a man, you're a woman. Either this or that. Clear, hard, binary distinctions. The infinitely complex world is flickering with way too much variation for us feeble human beings to process, so we like to make it compliant to our needs of order and expectability by subjecting it to those either/or-distinctions when we have the power to do so. We may not be too sure who we are, but we bloody well know who we are not, and that does the trick of establishing our identity just as much as knowing it positively in the first place: We are x as opposed to y. And for this trick to work, x and y must be mutually exclusive: all non-x are in fact y, whether they know and like it or not. Either this or that.

Intersexuals who genetically don't fit into the binary pattern of male or female have been forcibly made to fit without as much as a shrug for decades and centuries, tiny marginalized minority as they are, and hardly anybody even noticed that this might be a matter not just of social justice and moral righteousness but of human rights. The Federal Constitutional Court did notice now, in an astoundingly liberal and radical judgment that obliges the German legislator to provide for a „third option“ in the register of civil status: It does not suffice to leave the gender box unchecked as if intersexuals were simply non-existent in terms of gender. To be perceived by the state as what you are, that is what fundamental rights are there for in the first place, which is why the „third sex“ decision of the FCC is indeed an event of historical dimensions which merits an online symposium on Verfassungsblog organized by KATHARINA MANGOLD and with expected contributions by SARAH ELSUNI, CHRIS AMBROSI, ULRIKE KLÖPPEL, ELISABETH GREIF, GRIETJE BAARS, KATHARINA BAGER and possibly some others.

Last week I got knocked out by a nasty, protracted cold, which is why I had to skip this editorial last weekend – apologies – and even now I'm not completely restored, so Carla Dietmair jumps to my side to help me complete my duties.

## Strafers and cockroaches

In **Spain**, the judiciary has taken those Catalan independist leaders who haven't fled the country in custody, and those who fled to Belgium, including the deposed Prime Minister Puigdemont, will probably be transferred by an EU arrest warrant soon. [ARGELIA QUERALT](#) calmly reasons why this doesn't make Spain a dictatorship as some agitated independist partisans would have it, and [DANIEL SARMIENTO](#) awakes from uneasy dreams and finds himself metamorphosed into a gigantic insect: „It just happened. As I woke up, I could feel how my new legs and antennae moved with sinuous speed. Then I knew what I really had become. I had muted into a Spanish fascist.“

So many crises later, the euro crisis in 2011/12 appears almost early renaissance today. At that time, the fiscal pact was concluded outside the EU treaties, and at the end of the month it will expire unless it is incorporated into EU law. Arguments in favour of doing this are presented by [DIANE FROMAGE](#), those against by [BRUNO DE WITTE](#).

Even further back in the past are the protests against the G8 summit in Heiligendamm in 2007, where the state government tried to teach the protesters respect by having a fighting jet thunder over their camp at extremely low altitude. A decade later they are instructed in their turn by the German Federal Administrative Court about the fundamental right to freedom of assembly. [MAX PICHL](#) analyzes the decision (in German). [ARNE PILNIOK](#) furthermore reports (in German) how the FCC has strengthened parliamentary control, in particular the rights of the opposition parties, in this week's judgement on Parliament's right to information.

## Elsewhere

[SIBEL TOP](#) has also taken up the EU arrest warrant against Puigdemont. She is remembered of the Basque secessionists Moreno Ramajo and Garcia Arrantz who applied for asylum in Belgium twenty years ago. Puigdemont declared to have no such intentions. However, for his representation he chose the same lawyer that already represented Moreno and Garcia. [HENRI LABAYLE](#) und [BRUNO NASCIMBENE](#) also picked up on this fact and go through some legal and political aspects of a potential demand for asylum.

[MARIANA S MENDES](#) thinks about the consequences of the up-coming regional elections on the situation in Catalonia.

The Australian law according to which double-nationals are not eligible for Parliament has already cost the seats of five members of Parliament, including the Deputy Prime Minister Barnaby Joyce. [ELISA ARCONI](#) und [HELEN IRVING](#) report that the Australian High Court has now affirmed the decision.

[EMILIE REBSOMEN](#), [MERYL RECOTILLET](#) und [CAROLINE TEUMA](#) analyse the newest jurisprudence on German retrospective preventive detention, this time on the question if placement in a psychiatric treatment centre can be considered a penalty: the Court said no, the authors disagree.

[ROSELINE LETTERON](#) treats another judgement by the ECHR on the freedom to choose your place of residence, on particular on the question of so-called urban ghettos.

That's it for this week, and all the best,

Max Steinbeis and Carla Dietmair

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